

REMARKS

Applicants respectfully request further examination and reconsideration in view of the above amendment and the arguments set forth fully below.

Objections to the Specification

The specification is objected to as Figure 4c is not described in the brief description of the drawings. The above amendment to the specification makes that objection moot.

Rejections Under 35 U.S.C. § 102(b)

U.S. Patent No. 2,630,912, Sterilized Toothbrush Container

Claims 1, 6-10, 15-20, 24-28 and 34-37 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,630,912 to Warner et al. (Hereinafter "Warner"). Applicants respectfully traverse this rejection because the rejected claims all include additional limitations not disclosed in Warner. This rejection as to claims 10, 17, 18, 28 and 34-37 are moot as those claims are cancelled.

Warner discloses a Sterilized Toothbrush Container, the container includes a sterilizer in an end element. The brush does not contact the sterilizer, however upon viewing the drawings, especially Figure 2, it appears that the toothbrush bristles can contact the interior of the chamber. In contrast the present invention is for a cosmetic brush. In contrast the brush of the present invention is formed of a contaminant resistant material namely stainless steel or plastic.

A person designing a cosmetic brush would be motivated to study other cosmetic brushes **but NOT** toothbrushes. Applicant asserts that toothbrushes are not analogous art for cosmetic brush inventions. Toothbrushes have short relatively stiff bristles extending substantially perpendicular from the handle whereas cosmetic brushes have longer relatively flexible bristles substantially parallel to the handle. Claims 1, 19 and 28 are independent claims and all include the limitation that the apparatus includes a cosmetic brush formed of a contaminant resistant material, namely either stainless steel or plastic. The remaining claims listed which are not now cancelled (6-9, 20, and 24-27) are dependant upon claims 1, 19 or 28 and are allowable as depending from an allowable base claim.

For at least these reasons Claims 1, 6-9, 19-20 and 24-27 are not anticipated by Warner.

U.S. Patent No. 2,177,504, Tooth Brush Holder

Claims 1, 6-10, 15-20, 24-28 and 34-37 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,177,504 to Thompson et al. (Hereinafter "Thompson"). Applicants respectfully traverse this rejection because the rejected claims all include additional limitations not disclosed in Thompson. This rejection as to claims 10, 17, 18, 28 and 34-37 are moot as those claims are cancelled.

Warner discloses a Toothbrush Container, having an end cap which alternatively acts as a suction cup to hold the toothbrush on a surface such as a mirror or wall. It appears that the toothbrush bristles can contact the interior of the chamber. Indeed the cap for holding the toothbrush is a slot in which the toothbrush can be held in any position, including near the edge of the container. In contrast the present invention is for a cosmetic brush. In contrast the brush of the present invention is formed of a contaminant resistant material namely stainless steel or plastic.

A person designing a cosmetic brush would be motivated to study other cosmetic brushes **but NOT** toothbrushes. Applicant asserts that toothbrushes are not analogous art for cosmetic brush inventions. Toothbrushes have short relatively stiff bristles extending substantially perpendicular from the handle whereas cosmetic brushes have longer relatively flexible bristles substantially parallel to the handle. Claims 1, 19 and 28 are independent claims and all include the limitation that the apparatus includes a cosmetic brush formed of a contaminant resistant material, namely either stainless steel or plastic. The remaining claims listed which are not now cancelled (6-9, 20, and 24-27) are dependant upon claims 1, 19 or 28 and are allowable as depending from an allowable base claim.

For at least these reasons Claims 1, 6-9, 19-20 and 24-27 are not anticipated by Thompson.

U.S. Patent No. 5,992,617, Painting Implement Keeper

Claims 1, 6-7, 9-10, 15-16, 18-20, 24-25, 27-29, 34-35 and 37 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,992,617 to Couch et al. (Hereinafter "Couch"). Applicants respectfully traverse this rejection because the rejected claims all include additional limitations not disclosed in Couch.

Couch discloses a Painting Implement Keeper, but not an apparatus for bacteria reduction. The paint brush is held by a foam element. In contrast the claimed invention includes an endcap that has an aperture fashioned to receive the handle portion of the cosmetic brush.

Additionally, the Applicant points out that Couch does not disclose a configuration such that the brush is not in contact with the inner surface of the enclosure. In Couch, the paint brush is held in the implement holding sleeve. There is no restriction on the implement holding sleeve that it must maintain sufficient contact with the inner surface of the enclosure to keep the brushing means from contacting the inner surface. Indeed, the purpose of the invention is to keep a wet paint brush from drying out, and thus there is no motivation to prevent contact with the interior of the container.

Furthermore, the applicant contends that Couch fails to teach or suggest an apparatus, a cosmetic brush or a handle portion of a cosmetic brush which is fashioned from a contaminant resistant material. Claims 1, 19 and 28 are independent claims and all include the limitation that the apparatus includes a cosmetic brush formed of a contaminant resistant material, namely either stainless steel or plastic. The remaining claims listed which are not now cancelled (6-9, 20, and 24-27) are dependant upon claims 1, 19 or 28 and are allowable as depending from an allowable base claim.

For at least these reasons Claims 1, 6-9, 19-20 and 24-27 are not anticipated by Couch.

Rejections Under 35 U.S.C. § 103(a)

Claims 2-5, 11-14, 17, 21-23, 30-33, 36 and 38-45 were rejected under 35 U.S.C. 103(a) as being obvious. Claims 2, 5, 11-14, 17, 21, 23, 30-33 and 36 are cancelled. As discussed above, it is shown that that Warner, Thompson and Couch fail to disclose all the limitations of the claims.

To make a prima facie case of obviousness an examiner must show that a prior art reference (or references, when combined) teaches or suggests all the claim limitations. MPEP Section 2143. The present invention contains elements which are novel and not found in any of Warner, Thompson or Couch or their combination. Moreover, cosmetic brushes traditionally use wooden handles even though contaminants thrive. Were it obvious to use stainless steel or

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plastic, one would have done so. Thus, it is not obvious to use either stainless steel or plastic for cosmetic brushes.

Conclusion

For the reasons given above, applicants respectfully submit that the claims, as amended, are now in a condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, they are encouraged to call the undersigned at (408) 530-9700 to discuss the same so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,
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Dated: July 3, 2006

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CERTIFICATE OF MAILING (37 CFR § 1.8(a))

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the: Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450

HAVERSTOCK & OWENS LLP.

Date: 7-3-06 By: [Signature]